

Dear Ms Cook,

28 March 2022

APPEAL : Stage 1 complaint regarding the Diamond Jubilee Gardens having been entered onto the Brownfield Register as part of the Twickenham Riverside site

BACKGROUND

On 28 January this year, the Twickenham Riverside Trust (the Trust/TRT) made a complaint regarding the Brownfield status of the Diamond Jubilee Gardens (the Gardens/DJG). The Trustees – as owners (with a long lease until 2139) of this part of the TW7 site, identified in the Twickenham Area Action Plan (TAAP) and subsequently entered on the Brownfield Land Register (the Register/BLR) in 2017 – contested the inclusion of these public gardens on the Register on the grounds that it (a) was erroneous and (b) did not meet the criteria of the regulations.

The Trust requested that its land be removed from the Register with immediate effect.

The TAAP was adopted in July 2013 as part of the Local Plan. One of the sites within Twickenham identified for improvement was TW7, which can be seen here.

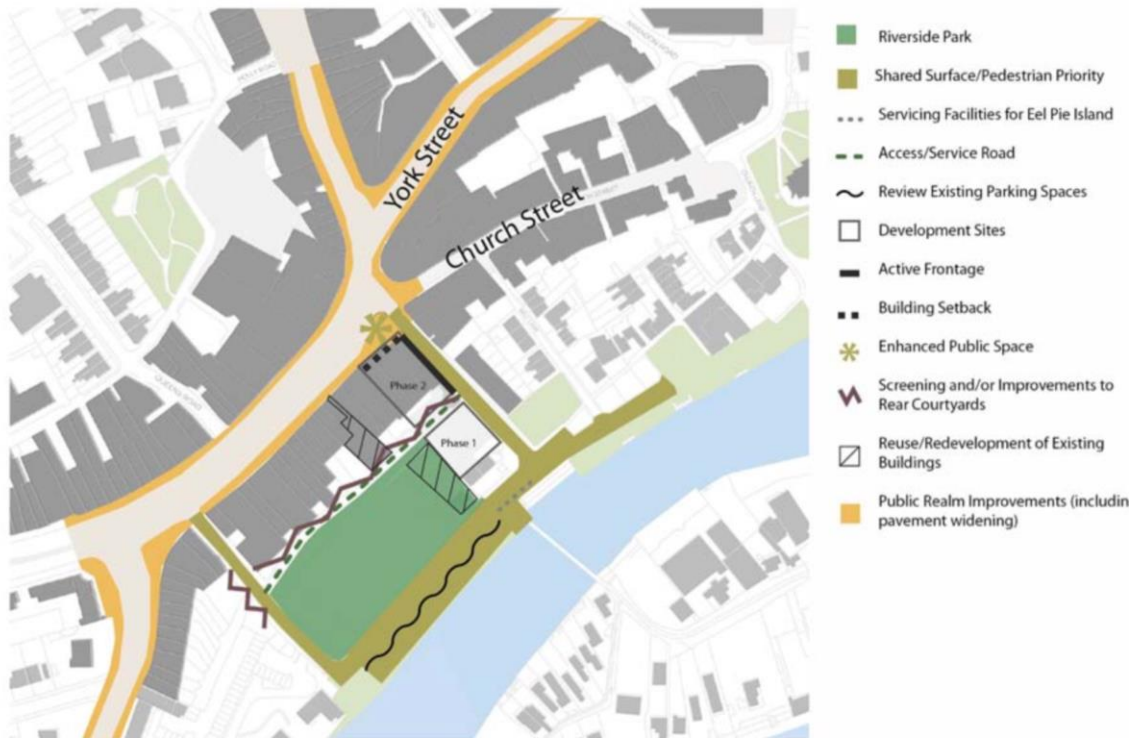
Adopted Twickenham Area Action Plan

Map 7.11 Twickenham Riverside and Approaches

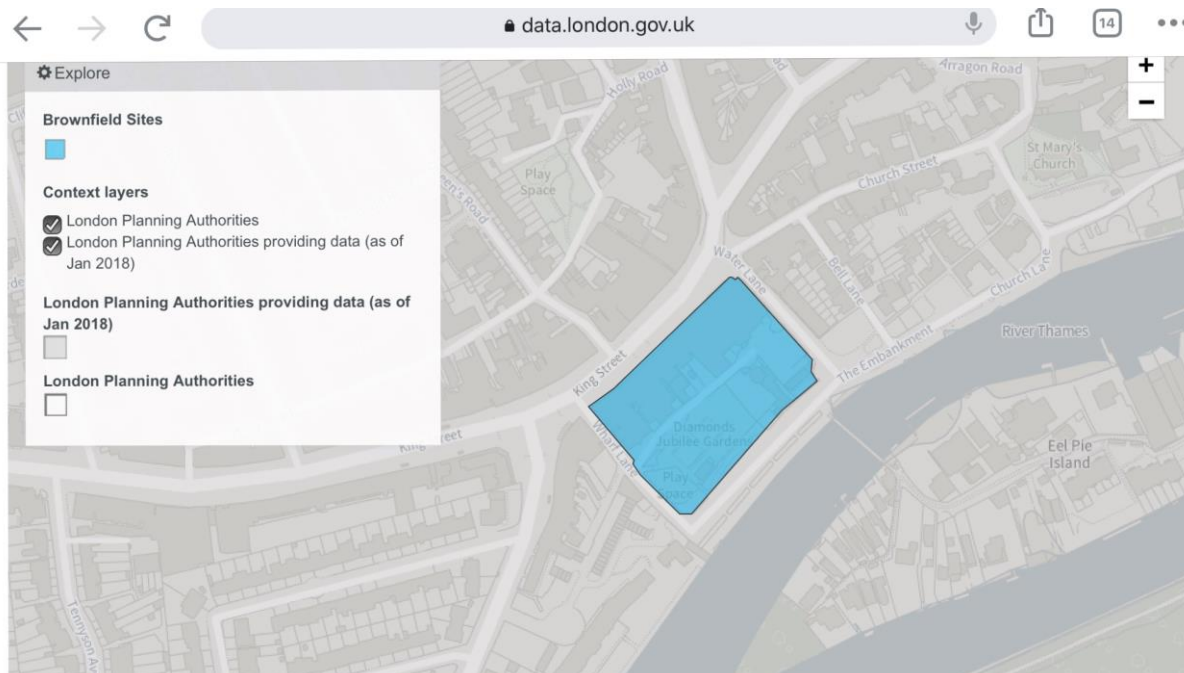


The next map drills down into the Plan's intentions in more detail.

Map 7.12 Twickenham Riverside and Approaches Principles



This is essentially the same site later entered by the Richmond Council on the Brownfield Land Register in December 2017, as can be seen here.



It can be seen in the TAAP plan (map 7.12) that a substantial proportion of the site is described as 'Riverside Park' and that, at that stage, the intention was that development should be confined to two specifically-marked boxes ('development sites') close to Water Lane, to be implemented in two phases. The principles laid down in the TAAP for the TW7 site also included: "To open up and redevelop/refurbish the remaining area of the former pool site, which adjoins the recently refurbished Diamond Jubilee Gardens".

Importantly, if account is taken of the actions of the Council (across different administrations) from 2005 to just before the entry of the TW7 site on the Brownfield Land Register in December 2017, **it is evident that there was a clear sequence of intention on the part of the Council throughout that period. The intention was that the area now known as the Diamond Jubilee Gardens – identified both in the 2013 TAAP as a 'public garden' and a 'riverside park' and then in the Council's Cabinet decisions during 2013-14 as 'public open space' – should be preserved long into the future as 'public open space'.** At that point, the documented intention was that improvements to the TW7 site should be much narrower and more focused than the Council's present proposal.

The questions raised in our complaint have direct and immediate relevance to the current planning application 21/2758/FUL relating to Twickenham Riverside. This was first raised by one of our trustees in a series of communications begun in February 2021, openly stating that she was a trustee and wished to clarify the status of the Diamond Jubilee Gardens under the BLR so that she could report that back to the TRT. In those, she also queried how and within what time-frame – if the gardens had been registered as Brownfield in error – mistakes might be rectified and she emphasised the importance she attached to receiving that information "so that trustees, like myself, can make informed decisions going forward".

THE APPEAL

On 3 March 2022, the Trust was informed by Andrea Kitzberger-Smith, Spatial Planning and Design Team Manager, that its complaint had not been upheld.

There appear to be two central themes underpinning the assessment – first, that the Diamond Jubilee Gardens were entered on the BLR register in 2017 as part of the TW7 site and that the Gardens were included in such register because they are not – and should not have been – designated as open space under the Local Plan; and, second, that the assessor has formed the view that the Trust has in some way expressed an intention either to develop or dispose of the Gardens. The Trust strongly refutes both of these suggestions.

We wish to appeal this ruling on the grounds that it is fundamentally flawed – because it does not take account of all the relevant circumstances and is therefore based on a number of misconceptions and errors.

With regard to the first limb of the assessment (non-designation of the Gardens as open space), we believe that critically, in 2017, the Council failed to inform itself and then to carry through the intent of either the TAAP itself or of crucial Cabinet-level decisions taken in 2014, which designated the Diamond Jubilee Gardens as 'public open space', into both the Local Plan and its wider planning policy – even though the implications for the TAAP were stressed at the time. Not only was this a practical policy oversight, but the Council's intention in 2014 had also been deliberately and explicitly enshrined in the legal title granted to the Trust in respect of the Diamond Jubilee Gardens – which was intended to last for more than a century.

With regard to the second limb of our appeal, in order for land to be registered on the BLR, the legislation requires a relevant landowner (such as the Trust) to have expressed an intention either to develop or dispose of it. The Trust has no intention to develop its land (not least because its lease and its charitable objectives prohibit it from so doing) and it has never expressed such an intention.

Nor has the Trust expressed an intention to dispose of the Gardens. However, the Council is seeking to impute such an intention based upon the Trust's stated (and continuing) readiness to consider a proposal for the re-provision of the public open space provided by the Gardens in certain defined circumstances.

At the time of the entry of the Gardens on the register in 2017, the Trust had not been notified of the Council's action, had not discussed the matter with the Council, and had not expressed any intention to develop or dispose of the Gardens. Indeed, the Trust has never given consent (or expressed the relevant intention) – either at that time, or since then – for the disposal or development of the land and is perplexed as to how the Gardens could have been entered on the BLR.

We believe that the reasons cited for including the Gardens in the Brownfield Land Register in 2017 were misconceived and failed to take account both of the actions taken by the Council in 2013-14 and of the lack of an expression of intention to dispose or develop on the part of the Trust. Therefore, there should have been no question of including the Diamond Jubilee Gardens in the Register. Further, the Council should have taken action since then at the appropriate time to remove this part of the BLR site from the notion of 'previously developed land'.

This failure has had the practical effect of allowing an area of designated 'public open space' and public 'garden' or 'park' to be included in the BLR site, contrary to the terms of (and intention behind) the Brownfield regulations. This entry was plain wrong and should be corrected.

THE FACTS

A fuller timeline of the sequence of events which led to the entry of the TW7 site on the BLR is at Attachment 1 to this appeal, together with precise references.

In summary:

- The history of the Diamond Jubilee Gardens is one of gradual creation and safeguarding of an area on the historic Twickenham Riverside for public recreation. The first, limited-area 'Jubilee Gardens' (with the café and the play area) were established in 2005 as a first step in the removal of the derelict areas of the former Twickenham lido. In 2011-12, the Gardens were subsequently expanded to their present size and arrangement, opened and renamed the DJG – marking HRH The Queen's Diamond Jubilee.
- The Twickenham Area Action Plan in July 2013 identified the TW7 site as a potential site for improvement, looking specifically "to open up and redevelop/refurbish the remaining area of the former pool site, which adjoins the recently refurbished Diamond Jubilee Gardens".
- In November 2013, the Council served a Public Notice stating its intention to protect the Gardens from development by designating them 'a public garden' under Section 122 of the Local Government Act 1972.
- In January and March 2014, the Gardens were formally designated as 'public open space' in the Council's Cabinet reports. The intention was stated by the Council to be for the Gardens to be held as public open space "in perpetuity" for the benefit of local residents. Importantly, in these reports, the Council recorded explicitly that this decision had wider policy implications and considerations for the TAAP.
- The Council had encouraged and endorsed the setting-up of the Twickenham Riverside Trust in 2011 with the explicit mandate to preserve this open space for the public benefit. In May 2014, the Trust was granted a 125-year lease providing legal title to the bulk of the Gardens until 2139 and requiring (with three separate direct mentions and one indirect mention within the lease) the Trust and the Council to preserve them as public open space.
- In 2015, the Council purchased the retail units at 1-3 King Street, with the specific intention of carrying through the intention encapsulated in the TW7 site plan within the TAAP, which envisaged the re-development both of those buildings and of the derelict car park behind them running along Water Lane, in two phases.
- In 2017, responding to the adoption of the newly adopted Brownfield Land Register regulations, the Council entered the entirety of the TW7 site on the Register as a potential site for housing development. No account was taken of the conversion already of part of the site to become public gardens or of their re-designation in 2014 as 'public open space'. The clear consequence of these earlier actions was to take the Gardens out of the definition of this land as "previously developed" and "suitable for inclusion in the BLR" under the definition of these terms in the 2012 National Planning Policy Framework. The Gardens should therefore no longer have qualified for entry on the BLR.
- Despite the clear instruction to the Council officers within the 2014 Cabinet reports to take this fact into account in the context of the TAAP and the legal obligations upon both the Council and the Trust (under

the lease on the Gardens), no action appears to have been taken to carry across the changed status of the Gardens as 'public open space' into the other relevant planning contexts.

- Nor has this aspect been remedied since then during the annual reviews of the Council's entries on the Brownfield Land Register, required by the 2017 regulations. This is the case even though a Trust member first raised the issue for clarification in February 2021* – with a view to understanding the Council's actions and their implications, in order to inform the Trust's deliberations – and even though there was a regular formal review of the Council's entries on the BLR in December 2021.

* NB: Indeed, during the first half of 2021, the trustee had met with a reluctance to provide the information she was seeking and had had to resort to an FOI request and to complaints both to the Council's CEO and to the Information Ombudsman. Only following these, was a substantial reply received. This, however, failed to address the core issue laid out in the Trust's complaint and this appeal (see next paras). Extracts from some of these exchanges are included in **Attachment 2** to this appeal, as background.

INVESTIGATION AND FINDINGS

Failure to ensure that the designation of the DJG as 'public open space' was applied also in the planning process

The Trust does not dispute that the DJG have not been designated as 'public open space' within the Local Plan, which is a matter of fact, and we accept the explanation given of the different purposes of the Local Government Act and the Town and Country Planning (Local Planning) (England) Regulations. However, the identification of the TW7 site in the TAAP – which had been finalised in 2013 as part of the Local Plan – places this site firmly within the planning process. The Council's long-term intentions regarding the land which would become known as the Diamond Jubilee Gardens were confirmed and refined in 2014, some months after the adoption of the TAAP. These should have been taken into account at the time of the transposal of the TW7 site into the BLR.

The Council's Cabinet in early 2014 approved the designation of the Gardens as 'public open space' under Section 122 of the Local Government Act 1972 and also the granting of a lease to the Twickenham Riverside Trust, "to ensure that the land is held in trust for the benefit of residents". It elaborated on the meaning of this: "The confirmation of the appropriation makes the Council's intention clear in that it intends to provide protection of the land for public use. The report to Cabinet on 19 September 2013 indicated that, subject to the appropriation, the Council progress the holding of this land in a trust for the maintenance and perpetuity of land at Diamond Jubilee Gardens for the benefit of local residents". Following a public consultation during November 2013, the Cabinet meeting on 16 January 2014 then confirmed these decisions explicitly, noting that they had wider policy implications/considerations for the Twickenham Area Action Plan (TAAP) – and therefore the planning process – and reiterating this again in the report to the 20 March 2014 Council meeting, see below.

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consecutive weeks and it is noted in paragraph 3.5 of this report that one formal response was received.

7. CONSULTATION AND ENGAGEMENT

7.1 A consultation process has been undertaken in accordance with the provisions of Section 123 of the Local Government Act 1972.

8. WIDER CORPORATE IMPLICATIONS

8.1 POLICY IMPLICATIONS / CONSIDERATIONS

Twickenham Area Action Plan.

8.2 RISK CONSIDERATIONS

As detailed within the Legal implications.

8.3 EQUALITY IMPACT CONSIDERATIONS

None directly.

8.4 ENVIRONMENTAL CONSIDERATIONS

Protection of public open space.

9. BACKGROUND INFORMATION:

Report to Cabinet – 16 January 2014

These statements make clear that the implications for the TAAP should be addressed and imply a clear instruction to Council officers (and the Council itself) to review/adjust the status of the Gardens in the TAAP at an appropriate time. However, this was not actioned and the Council's 2014 decisions were overlooked in 2017, when the Brownfield Land Register regulations were introduced and acted upon.

The Trust would argue that the Council failed to take the requisite action in 2014, and also since then, to implement the Council's decisions that this land should have the full protection of 'public open space' in all relevant contexts. If that had happened, the change in the status of the DJG would have been noted in the context of the TAAP (which is part of the Local Plan) and steps would have been taken to ensure that that intention was implemented at the next relevant stage in the planning process.

That stage was reached just three years later in 2017 with the adoption of the Brownfield Land Register regulations. The full TW7 site was included on the Register, even though it was clear that the Council had taken practical action and invested in improvements – first to the Jubilee Gardens prior to 2005 and then again over the period up to 2013-14 in the creation of the Diamond Jubilee Gardens (a substantial part of the TW7 site) – with the clearly evidenced intention that they should remain 'public open space' for more than a century into the future.

All of these points underpin the Trust's insistence that the inclusion of the Gardens within the site entered on the Register was wrong and requires correction.

The perpetuation of this error by the Council in 2017 into the annual reviews of the Council's entries on the Register since then – including that in December 2021 – has no bearing on the fact that the original entry of the Gardens on the Register was invalid and should not be allowed to stand.

The Trust's position

As previously stated, the assessor is relying on a perceived expression of an intention on the part of the Trust to develop or dispose of the Gardens as the rationale for putting and retaining the Gardens on the BLR.

In analysing whether such intention has been expressed, the assessment of the Spatial Planning and Design Team Manager makes a number of statements about "clauses in its [the Trust's] lease which it needs to oblige with", "criteria [which] may not have been fulfilled" and that "yet, in 2018, the TRT has agreed to consider a re-provision of its land as part of a RIBA Competition". It notes that "the TRT has been continuing to work with the Council to reach a negotiated agreement to dispose of the land" and references various events including correspondence and statements to Council committees by the previous Chair (mainly around January 2021), which had given an indication of positive progress in discussions regarding the surrender of the lease and the Trust's strategic desire to reach agreement. It then draws on these to conclude that "the addition of the overall site onto the Brownfield Land Register was not done in error".

The Trust questions the relevance of these statements. They certainly do not have any bearing on the question whether or not the part of the TW7 site represented by the Gardens should have been included on the Register:

- First, all of the events cited took place in 2018–2021, after the Council's action in 2017 and so clearly had no impact on the Council's decision to enter the TW7 site in its entirety on the Brownfield Land Register. The suggestion seems to be that the Trust has agreed to the entry ex post facto, which is incorrect and irrelevant.
- Second, in a wider context, the Trust has always been willing to consider and support improvements to the Riverside – but clearly and openly subject to its duties under its articles and to its responsibilities under the lease. The Trust has been – and remains – demonstrably flexible and open to including the existing Gardens within the Council's wider improvement plans, **provided** they are substituted by public open space which is of at least equivalent size and quality of amenity.
- Third, the fact that "the boundary of the site area entered onto the Brownfield Land Register reflects the adopted site allocation boundary as set out in the TAAP" is also irrelevant, given decisions taken by the Council Cabinet in 2014, following the adoption of the TAAP in 2013, which the Council should have taken

into account. The fact that the TAAP recommended more limited and defined areas of development within the TW7 site should also have been taken on board.

The Trust's objection to the registration of the Diamond Jubilee Gardens on the BLR is not at all inconsistent with its willingness to consider a re-provision of that open space within the wider design. Those positions are not mutually exclusive. The assessment's apparent extrapolation of the Trust's willingness and flexibility on the future re-provision – subject to its charitable objects and the requirement on the Trust to seek the endorsement of the Charity Commission on any disposal – as an indication of a desire or agreement to dispose of its land for development both confuses the concepts of 'intention' and 'consent' and seeks to convert the Trust's intention to consider future options into an intention to develop or dispose. This core starting point is misconstrued, incorrect and ultimately a self-serving interpretation.

Much is made of the former Trust Chair's statements at Council meetings, including in January 2021, and particularly his report that "positive progress had been made in discussions regarding surrender of the lease" and "a very constructive approach had been taken and that while contractual matters could be difficult, the strategic desire was to reach agreement". We do not know how much of the surrounding correspondence with Council officials has been shared with the assessor. However, the Trust considers the presentation of the facts surrounding these exchanges to have been selective and incomplete.

Caveats were expressed by the then Chair at the meetings of the Finance, Policy and Resources Committee of the Council in November 2020 and January 2021 and in subsequent exchanges with Council officers in March/April demonstrating that it was clear to the Council at that time that the position of the Trust was not as clear-cut as suggested by the narrative promoted by the Council and reflected in the assessment. Specifically, highlighting that:

- the plan for the site of the re-provisioned Diamond Jubilee Gardens had not yet been finalised (and indeed, would not be until June 2021);
- There had been a six-month delay by the Council and the Heads of Terms for the new arrangement had not therefore progressed since May 2020 (which were still then and remain "Subject to Contract, Council and Trust Approval & Without Prejudice");
- the Trust was under a strict fiduciary duty to appoint an independent surveyor to judge whether the amenity of the re-provisioned land would be as good as what was already in place and then to seek the approval of the Charity Commission for the disposal, not least because the Council was a 'connected party' having placed the Gardens in trust. (In the event, because of continuing uncertainties and the Council's change of CPO strategy in September 2021, it would not prove possible for the Trust to obtain the surveyor's report until November 2021.)

For all these reasons, we are calling for the assessment's interpretation of the Trust's intention in this matter to be withdrawn and the registration of the area represented by the Gardens to be rectified.

Factors relating to housing

The assessment notes the role and purpose of the Register: "to provide up-to-date and consistent information on sites with potential for residential development. The site allocation as set out in the Council's TAAP indicates that it is appropriate for housing development in part". The assessment goes on to state that "I have seen sufficient correspondence between the Council and the TRT, particularly by the former and current Chair, to come to the conclusion that there has been no rooted objection to the principle of housing development within a redevelopment scheme by the TRT". Again, this misses the point. In addition to the fact that this suggestion also ignores the true timeline, it contains the implication that, in some way, the Trust has now expressed an objection in its complaint to a development of the BLR site including an element of housing. Subject to our wish and duty to preserve the existing public open space within the BLR site, the Trust has never had such an objection.

However, the Trust notes that Council minutes show that – already during 2007-09, (ie between the creation of the first, limited Jubilee Gardens in 2005 and the period immediately before their expansion and re-creation as

the Diamond Jubilee Gardens, secured into the future) – action was taken to meet the then affordable housing requirement in respect of Twickenham Riverside. A substantial list of affordable housing projects was drawn up – in lieu of on-site provision on the Twickenham Riverside site – which were then agreed in 2009 and built elsewhere in the borough on sites that had been identified in a 'linked site' strategy.

In addition, more generally, the quantum of housing being contemplated in the Council's plans derives from the size of the area identified for potential development in the BLR. In turn, this clearly has a direct impact on the preservation of public open space.

Again, the assessment states that: "With respect to whether the site has met the criteria of 'available for residential development' as set out in The Town and Country Planning (Brownfield Land Register) Regulations 2017, my investigation has established that the site of the former Twickenham Pools meets the criteria set out in regulation 4 of The Town and Country Planning (Brownfield Land Register) Regulations 2017". The Trust insists that this cannot be determined until the position is clarified regarding the Council's failure to carry through the 2014 imperative of preserving the public open space represented by the DJG, and the perpetuation of that failing since 2017.

The assessment continues: "In addition, section 14A of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to have regard to:

- (a) the development plan;
- (b) national policies and advice;
- (c) any guidance issued by the Secretary of State.

Note that criterion (a) includes development plan documents, one of which is the TAAP, alongside the Local Plan and London Plan".

As evidenced above, the full picture regarding (a) – i.e. the TAAP, which is part of the Local Plan – was not taken into account.

Lack of compliance with the requirements relating to the owner of land

The assessment emphasises that the issue of ownership of the land "is linked to criterion 4(c) of The Town and Country Planning (Brownfield Land Register) Regulations 2017, i.e. 'the land is available for residential development'. In 4(2) it states that 'available for residential development' in relation to any land means (a) the relevant owner (or, where there is more than one, all the relevant owners), has expressed an intention to sell or develop the land and at a date not more than 21 days before the entry date there is no evidence indicating a change to that intention, having regard to (i) any information publicly available on that date; and (ii) any relevant representations received".

While the assessment acknowledges that entry of land on the Brownfield Register requires the consent of owners, it does not take account of the fact that **the Trust – as the legal owner in 2017 for more than a century into the future – has never given its consent to the Gardens being "available for residential development" or expressed any such intention.** This was stated strongly in our original complaint.

Moreover, the assessment mixes its argument with the issue of possible objections to the principle of housing within the redevelopment scheme (discussed in the last section). As if to justify the fact that the Trust was not notified of or consulted on the Council's intention to enter the Gardens on the Register, the assessment merely insists that "the land is available for residential development" under the terms of the 2017 regulations.

The Glossary in the National Planning Policy Framework states that the 2017 regulations allow local planning authorities "to trigger a grant of permission in principle for residential development on suitable sites in their registers where they follow the required procedures". The Trust argues that this clearly did not happen – the Council did not comply with the required procedures in regard to that part of the TW7/BLR site represented by the Gardens.

Finally, under this section, the Trust notes that the intention of the BLR legislation is to facilitate the unlocking of 'previously developed land' as sites for potential development. It is not intended to be used to seize land which is greenfield or a park from third parties, which is what is effectively being promoted here by the Council.

Other comments

The assessment notes that the DJG do "not even comprise half of the whole-site allocation of TW7, as set out in the Twickenham Area Action Plan (TAAP) (2013), which has been entered onto the Brownfield Land Register". The Trust does not understand the relevance of this statement, particularly since the area comprising the Gardens should not have been included in the BLR site in the first instance.

It also records that the Greater London Authority (GLA) has not yet updated its Datastore with the latest updates from Richmond Council and promises to follow this up with the GLA to ensure this will be actioned, stating that, "to the best of my knowledge, the TRT's position has/had not changed when the last update was done in December 2021". The Trust has sought clarification of this statement, which seemed to reflect a number of misconceptions of the Trust's thinking and general position throughout the assessment, and has received a reply which simply repeats the assessment that "to the best of my knowledge, when the Council updated the Brownfield Land Register in 2021, the Trust's position has/had not changed as I have seen sufficient correspondence between the Council and the Trust to come to the conclusion that there has been no rooted objection to the principle of developing the land". As noted above, particularly under 'The Trust's position' and 'Factors relating to housing', the issue is more complex than presented and – for the reasons given and also particularly in light of the specific concerns raised about the Brownfield status of the Gardens on several occasions during the year (including those in Attachment 2) – should not have given rise to the conclusion that the Trust agreed with their inclusion in the BLR.

DECISION AND APPEAL

The Trust claims therefore that, for all these reasons, the decision in the assessment of the Spatial Planning and Design Team Manager is fundamentally flawed and should be overturned on appeal. **The interpretation of the Trust's intention regarding the disposal of the land which it holds on lease should be withdrawn and the inclusion of the Diamond Jubilee Gardens within the area entered on the Brownfield Land Register in 2017 should be reviewed urgently and cancelled. The Council should remove the Gardens from the site identified in the BLR so as to respect the intention of the Council, set out clearly both in the TAAP and in 2014, that they should remain 'public open space' and a 'garden' into the future.**

We would be very willing to provide further information or discuss any aspects in support of this appeal, if that would be helpful.

Yours sincerely,

Luke Montgomery-Smith
Chair, Twickenham Riverside Trust

Attachment 1: Full timeline including references

Attachment 2: Extracts from exchanges with the LBRUT CEO, the Ombudsman, and the LBRUT FOI officer

FULL TIMELINE INCLUDING REFERENCES

1981

The Twickenham lido is closed and the site is allowed to become derelict.

2005

Some 25 years later, the first refurbishments and improvements take place on the pool site above Twickenham Embankment, with a new landscaped space on the Embankment and a retaining wall. Above this, in June, the new children's playground, café and toilets were opened.

2007-2009

Action is taken to draw up and agree a list of affordable housing units which were then agreed by planning during 2009, to be built elsewhere in the borough on sites identified in a 'linked site' strategy.

The minutes of the Council meeting on 11.8.09 note: "The Council has given a commitment to provide at least 160 habitable rooms of affordable housing **in lieu of on-site provision at Friars Lane car park and Twickenham Riverside sites**. The Council is meeting in excess of the 40% provision through the use of these sites". A detailed list of these sites was appended. All were built subsequently.

2011-2012

With the encouragement and endorsement of the Council, the Twickenham Riverside Trust was formed in 2011 as a charity with the objects to "preserve, protect and improve" Twickenham riverside and its environs for the benefit of the public.

The Gardens are expanded to their present size and are opened and renamed in 2012 – marking HRH The Queen's Diamond Jubilee. Trees are planted to celebrate that anniversary, together with an array of plants selected to provide an attractive environment for bees and butterflies. The next year, the Gardens are given the Sustainable Landscaping Award by London in Bloom.

2013

Report dated 28 May by Wendy Burden, an inspector appointed by the Secretary of State for Communities and Local Government, recommended modifications be made to the Twickenham Area Action Plan (TAAP) prior to it being adopted on 2 July, ensuring it was legally sound. The basis of the inspector's findings was the examination of the draft plan submitted in October 2012. At the time, the Gardens were newly established and under the ownership of the Council; they had not yet been formally designated as 'public open space'. Despite this, the inspector clearly worked on the premise that the Gardens were a first stage prior to anticipated works to area TW7. This is confirmed by the following modifications inserted: "To open up and redevelop/refurbish the remaining area of the former pool site **which adjoins the recently refurbished Jubilee Gardens**" (MM9) and that future development of the wider site would "**enhance and extend Diamond Jubilee Gardens**" (MM18).

Excerpts from her report

"55. During my visits to Twickenham I spent time in Jubilee Gardens. The **public open space** was well used, in particular by families of young children who can play safely within the fenced confines of the Gardens."

“59. On the north east side of the Jubilee Gardens, a tall fence separates the landscaped open space from the remaining area of the site and buildings which were connected with the swimming pool. The site is in public ownership and is in need of either re-use or refurbishment. At present the AAP refers to the site in general terms, and it is not entirely clear what action is to be taken to bring any proposal forward. Para 7.5.2.3 bullet 3 refers to the “derelict” former pool site, but part of the former pool site has now become Jubilee Gardens. In view of the **relationship of the derelict area with the landscaped open space**, the opening up of the derelict area, possibly as an extension to Jubilee Gardens, and the refurbishment or redevelopment of the buildings for mixed uses as referred to in Para 7.5.5.4 bullet 2, would **protect and enhance the existing area of open space** and add to the attraction of the riverside area to visitors. On Map 7.12 the area forms part of the **Riverside Park** in which there is to be reuse/redevelopment of existing buildings. **In view of the relationship of the area with the Jubilee Gardens there is no reason why it should not be dealt with separately from the redevelopment of the Water Lane car park** which forms the main part of Phase 1. Recommendations are included in MM9, MM15, MM16, and MM18 to clarify the future actions to be taken in respect of this area and to ensure that the plan is effective in this respect.”

“Para 7.5.2.3 bullet 3 refers to the “derelict” former pool site, but **part of the former pool site has now become Jubilee Gardens**. In view of the relationship of the derelict area with the **landscaped open space**, the opening up of the derelict area, possibly as an extension to Jubilee Gardens, and the refurbishment or redevelopment of the buildings for mixed uses as referred to in 7.5.5.4 bullet 2, would **protect and enhance the existing area of open space** and add to the attraction of the riverside area to visitors.”

On **1 November** 2013, the Council served a **Public Notice** stating its intention to protect the Gardens from development by **designating them ‘a public garden’ under Section 122 of the Local Government Act**.

2014

Meeting of the Council’s Cabinet on 16 January. The report to Cabinet by the then Deputy Leader and Cabinet Member for Resources “further to the outcome of the public consultation on the appropriation of Council-owned land [the Diamond Jubilee Gardens] to public open space and the future proposed lease arrangements for this site as designated public open space” states – <https://cabnet.richmond.gov.uk/documents/s45121/> :

Section 3.6 “The confirmation of the appropriation makes the **Council’s intention clear in that it intends to provide protection of the land for public use**. The report to Cabinet on 19 September 2013 indicated that, subject to the appropriation, the Council progress the holding of this land **for the maintenance and perpetuity of land at Diamond Jubilee Gardens for the benefit of local residents**”.

Section 8.1 of the report, on “Wider corporate implications”, noted explicitly that this **action had “policy implications/considerations” for the Twickenham Area Action Plan**.

The minutes state: “Resolved: That Cabinet:

1. Approves the designation of land at Diamond Jubilee Gardens, Twickenham, identified in plan included in the report, **as Public Open Space** under Section 122 of the Local Government Act 1972.
2. Approves the granting of a lease to an appropriate Trust, that being Twickenham Riverside Trust, to ensure that the land be held in trust for the benefit of residents.
3. Approves the Council’s membership of Twickenham Riverside Trust.
4. Approves that the area of Council owned land at Diamond Jubilee Gardens, Twickenham, identified in the plan attached to the report, be considered under Section 123 of the Local Government Act 1972 and to implement the statutory procedure set out under Section 123 to enter into a lease with Twickenham Riverside Trust.
5. Receives a further report, including details of the outcome of the public consultation required under Section 123 above at a future meeting.

6. Delegates authority to the Deputy Leader following consultation with the Director of Environment, to finalise the terms of the lease”.

Meeting of the Council’s Cabinet on 20 March. Report to Cabinet includes a Notice:

“3.6 The Plan [of Diamond Jubilee Gardens in Appendix 1 to the report] is delineated specifically to provide for the delivery of the plans as set out within the Twickenham Area Action Plan and which complement the security of the Public Open Space.”

As in the Cabinet report for the 16 January meeting, the report again highlights that there are policy implications/considerations for the TAAP.

The minutes record the earlier decision to designate “the land as public open space in perpetuity ... which had been a commitment the current Administration in response to the wishes of the local community”. They state: “Resolved: That Cabinet approves, further to public consultation, the disposal of Diamond Jubilee Gardens, Twickenham, identified in the plan attached under Section 123 of the Local Government Act 1972”.

Grant in May 2014 of a lease over the Diamond Jubilee Gardens to the Twickenham Riverside Trust. Following these decisions of the Council, a 125-year lease was granted to the Trust, thereby implementing in a legal contract the Council’s stated intention to maintain the Gardens as “public open space” in perpetuity for the benefit of local residents – at least until 2139.

The Trust is required by the lease explicitly:

- **“to maintain the Property as Public Open Space** and maintain responsibility for the repair and maintenance thereof ...” (Section 3.4.1)
- **“not to use the Property otherwise than:**
 - (a) for the purposes of the provision of Public Open Space**, including the playground, for the benefit of the community;
 - (b) for the provision of a cafe with outside seating area and toilets and other community facilities within the Public Open Space;**
 - (c) for community, fundraising and recreational purposes which are ancillary to the use permitted under this Clause 3”. (Section 3.10.3).**

The Council is required:

- **“as from the Term Commencement Date and for a period of 10 years thereafter to maintain the Property as Public Open Space** and maintain responsibility for the repair and maintenance thereof...” (Section 4.2)
- to ensure ‘that the Tenant may peaceably and quietly hold and enjoy the Property during the Term without any interruption or disturbance by the Landlord ... [and] further covenants to use its best endeavours to ensure that support and assistance is provided to the Tenant in carrying out its activities under the terms of the Lease ...”. (Section 4.1)

A further provision in the lease places the Gardens squarely in the category of a park and a public open space:

- **“The Tenant, and event organisers authorised by the Tenant, shall be permitted to display banners and signs in accordance with adopted Parks and Open Spaces policy in regards to the display of signs within parks and open spaces”. (Section 3.7.2)**

2015

The Council acquires the properties at 1-3 King Street, with a view to incorporating that land into its proposed improvements for the Riverside.

2017

New Brownfield Land regulations. The Town and Country Planning (Brownfield Land Register) Regulations 2017 are adopted on 20 March and require local planning authorities, by the end of the year, to prepare and maintain a register of “previously developed land” which (a) is within their area and (b) is land of a certain size and is suitable and available for residential development.

The definition of “available for residential development” includes the requirements that “the relevant owner (or, where there is more than one, all the relevant owners) has expressed an intention to sell or develop the land” and that “in the opinion of the local authority there are no issues relating to the ownership of the land or other legal impediments which might prevent residential development of the land taking place”.

Responding to the adoption of these regulations, on 13 December, the Council entered a number of sites on the Register as potential sites for housing development. These included the TW7 site, including the Diamond Jubilee Gardens.

However, **no account was taken by the Council** of :

- the improvement of part of the site to become public gardens (therefore no longer within the definition of “previously developed”) or of their re-designation as “public open space”. The definition of “previously developed land” in the National Planning Policy Framework of 2012, as updated, excludes “land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape”. Both of these land types apply to the Diamond Jubilee Gardens;
- the clear instructions within the Cabinet reports to take this fact into account in the context of the TAAP and the legal obligations upon the Council and the Trust (under the lease on the Gardens). Despite these, no action appears to have been taken to carry across the requirement that the gardens remain “public open space” into the other relevant planning contexts or to update Government maps used for planning purposes;
- the facts that the matter had not been raised with the owner (with leasehold title to the Gardens) and that the owner had – and had expressed – no intention at all to sell or develop the Gardens. Indeed, the owner was prohibited from considering any such possibility under the terms of the lease;
- the requirement to follow due process, which is clear from the NPPF definition of “brownfield land registers” and from the 2017 regulations. These allow local planning authorities “to trigger a grant of permission in principle for residential development on suitable sites in their registers where they follow the required procedures”. The Trust argues that this did not happen in the case of that part of the TW7/BLR site represented by the Gardens.

2018 TO DATE

Nor have these omissions been remedied during the annual reviews of the Council’s entries on the Brownfield Land Register, required by the 2017 regulations, or in the reviews required to be made of Local Plans “in whole or in part to respond flexibly to changing circumstances”. This is the case even though a Trust member raised the issue several times over the last year for clarification, from as early as February 2021.

EXTRACTS FROM EXCHANGES WITH THE LBRUT CEO, THE OMBUDSMAN, AND THE LBRUT FOI OFFICER

1 OFFICIAL COMPLAINT BY TRT TRUSTEE TO CEO OF RICHMOND COUNCIL

From: Janine Fotiadis-Negreponte <janinefotiadis@yahoo.co.uk>

Date: **13 May 2021** at 18:13:16 BST

To: mark.maidment@richmondandwandsworth.gov.uk

Subject: Official Complaint - Janine Fotiadis-Negrepontis

Official Complaint 13.05.21
Janine Fotiadis-Negrepontis
Tanglewind
Riverside
TW1 3DJ
07500 803122

Dear Mr Maidment,

I hope you are well.

By way of introduction, I am a Twickenham Riverside resident and have been a trustee of the Twickenham Riverside Trust (TRT) since October last year. The TRT has a 125-year lease on the public gardens known as the Diamond Jubilee Gardens (DJG) on Twickenham Riverside. Owing to the fact that the council has been less than forthcoming with information my complaint is based solely on my understanding of the facts.

Complaint:

- 1) The council failed to formally designate the DJG as Public Open Space (POS) in 2014 as was resolved at cabinet that year
- 2) The DJG was erroneously entered onto the government Brownfield Register in late 2017
- 3) The council's failure to properly designate the site has led to the gardens to be included in a wider area earmarked for regeneration in the Adopted Plan
- 4) Mr Paul Chadwick has been obstructive in dealing with information requests regarding the DJG and site designations. Lucy Thatcher did not provide a proper/adequate response to my request about Brownfield. The FOI officer failed to provide me with the information I requested.

Suggested resolution:

- 1) The Council investigates whether it failed to formally designate the DJGs as POS in 2014
- 2) The council investigates if the DJG were erroneously entered onto the Brownfield Register in 2017
- 3) The council investigates how the DJG fell within the regeneration site of the Adopted Local Plan when it had clearly been identified in the Twickenham Area Action Plan 2013 as being excluded for development.
- 4) That all of the information requested from Paul Chadwick (Cc'd Charles Murphy and Anna Sadler) on 8th April 2021 is forthcoming, in good time, before the planning hearing for the Twickenham Riverside Development

Since the last exchange between myself and Mr Chadwick I have reluctantly opened a case with the Information Ombudsman. I find it noteworthy that the council has been unwilling to assist me in this matter. I worry that mistakes have been made by either this council or the previous (possibly both) with regards to the DJG's site

designations. Furthermore, I feel that those mistakes have left the DJG vulnerable to development contrary to the previous council's intentions when it gave the TRT a 125-year lease for the DJG.

Please find attached the full background to the complaint including correspondence between myself and council officers.

Thank you for your time in this matter
Please acknowledge receipt of this complaint

Kindest
Janine Fotiadis-Negrepontis

Since February 8th 2021 I have been trying to ascertain, from various council officers at LBRuT, whether the Diamond Jubilee Gardens were erroneously added to the government's Brownfield Register by the council in 2017. And what, if any, implications this has on the future of the gardens.

To date, my efforts have been met with resistance from council officers. The information requested would enable me personally to carry out my duties as a trustee. You will be aware the Council is considering taking Compulsory Purchase Powers in order to obtain the gardens should negotiations with the TRT fail. By law, the Trust must undertake a surveyors' report to present to the Charity Commission. The report will assess current and future amenity value of the gardens among other things. Therefore, land designations are a significant factor. Further, if the land is designated Public Open Space and not Brownfield, the Trust must undertake a public consultation before disposing of the land.

With regards to Brownfield. It is my understanding that consent must be sought from leaseholders of the land, before entering said land onto the Brownfield Register, that children's play areas and Public Open Space cannot ordinarily be entered as Brownfield without public notification etc. The Trust, to my knowledge has never agreed for its asset to be included on the Brownfield Register.

In January 2014 it was agreed at cabinet, that the DJGs would be designated as Public Open Space.

"Further to public consultation, Cabinet approve the designation of land at Diamond Jubilee Gardens, Twickenham, identified in the attached plan, as Public Open Space under Section 122 of the Local Government Act 1972." (Cabinet, 16.01.2014)

Cabinet meetings which addressed the DJG/ Public Open Space, plus a map of the area :

16.01.2014

<https://cabnet.richmond.gov.uk/documents/s45121/Diamond%20Jubilee%20Gardens.pdf>
<https://cabnet.richmond.gov.uk/documents/s45123/Enc>

20.03.2014

<https://cabnet.richmond.gov.uk/documents/s49609/Diamond%20Jubilee%20Gardens%20-%20Section%20123%20Notice.pdf>

On 8th February this year I sent an email to Lucy Thatcher (planning officer) questioning whether the gardens had been erroneously registered as Brownfield in 2017. Ms Thatcher replied on the 16.02.21 that the gardens were Brownfield and that “ ‘in planning terms’ the Diamond Jubilee Gardens is not designated public open space within the Adopted Local Plan.”

The question remains why the gardens were not POS ‘in planning terms’.

Following this I wrote to LBRuT’s FOI department on the 25.02.2021 asking for documentation showing that the gardens had been designated POS in 2014. Additionally, requesting all documentation including any public notices supporting the new Brownfield designation. The information officer’s reply on the 7th April included neither.

On 1st March, Hugh Brasher, Chair of the TRT sent an email to Mr Chadwick, on my behalf, asking if ‘the reprovisioned land [would] come under a) all land designated POS, b) partial designation of POS or, c) something else’. Unfortunately, Mr Chadwick was not willing to divulge the information due to the fact another individual had apparently requested the same information via FOI.

On 8th April I sent the following email to Mr Chadwick:

Dear Mr Chadwick, (*including Anna Sadler, Charles Murphy and Twickenham Riverside Trustees*)

I hope you are well. By way of introduction, I am a trustee for the Twickenham Riverside Trust. As you are aware, the council is currently in discussions with the Trust regarding the Twickenham Riverside development.

Since February 8th 2021 I have been trying to gather information from the council regarding the land designations on the Riverside.

The information I have been provided with, to date, is insufficient despite much of my time being invested in the matter. It is of the utmost importance that this information is released so that trustees, like myself, can make informed decisions going forward.

I have followed best practice in my many approaches to council officers and subsequently the council’s FOI team. Additional to this, I approached the Chair of the Trust, Hugh Brasher, to obtain information on my behalf at meetings which you have attended along with Anna Sadler. Unfortunately, I am still no further forward.

The outstanding information required is:

1) The Diamond Jubilee gardens were, it was decided at Cabinet on 19/09/2013, to be designated Public Open Space. I would like documentary evidence demonstrating that the land did in fact get designated. Please see below for details.

Resolved: That Cabinet:

- Approves that the area of Council owned land at Diamond Jubilee Gardens, Twickenham identified in the plan contained within the report, be appropriated as Public Open Space under Section 122 of the Local Government Act 1972 and to implement the statutory procedure set out under Section 122.
- Agrees to receive a further report, including details of the outcome of the public consultation required under Section 122.

Report author: Ishbel Murray

Publication date: 01/10/2013

Date of decision: 19/09/2013

Decided at meeting: [19/09/2013 - Cabinet](#)

Effective from: 02/10/2013

Accompanying Documents:

- Designation of Public Open Space PDF 64 KB
- Enc. 1 for Designation of Public Open Space PDF 457 KB

2) Planning Officer Lucy Thatcher corresponded on 16/02/21 that “in planning terms the Diamond Jubilee Gardens is not designated Public Open Space within the Adopted Local Plan”.

Has the Diamond Jubilee Gardens had its Public Open Space designation removed? If so, could you please provide all relevant documents to support this including the Public Disposal Notice.

3) Research shows that the gardens were entered onto the government’s Brownfield register in 12/13/17 indeed Ms Thatcher has confirmed this to be true. Can you please provide council documents relating to the gardens being registered Brownfield. And provide evidence whereby the TRT agreed to them being registered Brownfield. I’m also seeking clarity on how the public garden qualified for Brownfield designation.

The criteria for registration as set out in The Town and Country Planning (Brownfield Land Register) Regulations 2017: <https://www.legislation.gov.uk/uksi/2017/403/regulation/4/made>

4) The Brownfield Register (updated in December 2020) for Twickenham Riverside (old pool site) states ‘a maximum of 10 net dwellings’ and ‘a minimum of 9 net dwellings’. Could you please clarify what this refers to, is it the number of dwellings that can be built on the site by law?

5) On the Government Land Designation Maps the Diamond Jubilee Gardens does not appear as Public Open Space neither does it appear as sitting within a Conservation Area. Could you please explain the reasons why?

6) Finally, could you please provide a map of the Trust’s proposed reprovisioned land with details of all land designations?

Thank you for your time with this matter. The information you provide will be hugely beneficial to the Trust at this time.

Could you please acknowledge receipt of this email and let me know when I should expect to receive the information.

Kindest regards

Janine Fotiadis-Negrepontis

Having not received acknowledgement of my original email to Mr Chadwick, on the 15th April I sent a polite prompt and explained that the Trust would be appointing a surveyor soon. I also asked that my request for information was processed under FOI law. Yet again there was no response so I sent another polite prompt on the 22nd of April. Some 20 days after my original email I received the following reply from Mr Chadwick.

Official

Hello Janine

A slight delay re my promised reply. A spike in Covid-19 work was the cause.

It strikes me that my colleagues have attempted to answer your questions as fully as they are able.

What I would like to understand before we can try to help you any more is just what your objectives are against where we are heading with this project in overall terms.

At the moment I am at a loss as to understand that and to understand why any more information and clarity than you already have is truly , quote "...hugely beneficial to the Trust at this time" and why it is "of the upmost importance that this information is released so that trustees, like myself, can make informed decisions going forward".

What surely needs to be the focus of all efforts and is certainly that of my colleagues is:

1. Ensuring that the proposed terms of the new lease are legally constructed and deal properly with the land's status and ensures that the Trust have the accessible open space that they want to the standard that they want, and
2. Ensuring that the planning process that will follow in due course properly deals with whatever is the land's planning status now and if necessary adjusts that status in planning terms via the terms of the (hoped for) approval and its conditions.

What I can absolutely sure you of is that we ensure that all bases are covered off in both respects, as in we will make sure the landowning and planning processes are properly followed and capture whatever land designation issues need to be captured.

Surely that is suffice?

Paul

Paul Chadwick

Director of Environment and Community Services

Serving Richmond and Wandsworth Councils

To which I replied on 30th April 2021:

Dear Mr Chadwick,

It is with regret that you are unwilling to supply the information I requested back on April 8th. Since February this year I have been trying to ascertain from the council whether the Diamond Jubilee Gardens were officially

designated Public Open Space (POS) in 2013 following a decision to do so at Cabinet and a public announcement by the council stating that the gardens had become POS.

In 2017 the council entered the gardens onto the government's Brownfield Register, to my knowledge, without the consent of the Twickenham Riverside Trust (the lease-holder).

I am trying to understand whether the gardens were officially designated POS in/around 2013 or whether the council failed to action this. Additionally, I would like to understand whether the gardens were erroneously entered onto the Brownfield Register.

With regards to future designations of the site, I would like to know if all of the proposed reprovisioned land being offered to the Twickenham Riverside Trust will be POS or whether different land pockets will have differing designations.

As you know, I am a trustee of the Twickenham Riverside Trust and the outstanding information would enable me to carry out my duties.

In the meanwhile, I have opened a case with the Information Ombudsman.

Please find my original information request below should you be minded to release the information.

Kindest

Janine Fotiadis-Negrepontis

The outstanding information requested is: Please see email from 8th April to Mr Chadwick. The same request for information was included.

FYI The following links include information relating to the criteria by which land can be registered as Brownfield:

The Town and Country Planning (Brownfield Land Register) Regulations 2017 (in its entirety):

<https://www.legislation.gov.uk/ukxi/2017/403/contents/made>

Brownfield Criteria: <https://www.legislation.gov.uk/ukxi/2017/403/regulation/4/made>

Entry of Land in the Register: <https://www.legislation.gov.uk/ukxi/2017/403/regulation/5/made>

Exemptions for Certain Types of Land:

<https://www.legislation.gov.uk/ukxi/2017/403/regulation/14/made>

2 COMPLAINT TO THE OMBUDSMAN AND THE REPLY

From: ICO Casework <icocasework@ico.org.uk>

Date: **26 May 2021** at 12:19:22 BST

To: janinefotiadis@yahoo.co.uk

Subject: Your email to the ICO - Case Reference IC-103469-V7L7

26 May 2021

Case Reference: IC-103469-V7L7

Dear Janine Fotiadis-Negrepontis

Thank you for your email of **29 April 2021**.

Please see the attached correspondence for your attention.

Yours sincerely,

David Dutton

Lead Case Officer

Information Commissioner's Office

Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

T. [0330 414 6281](tel:03304146281) ico.org.uk twitter.com/iconews

----- Original Message -----

External: This email originated outside the ICO.

Interview Date: 29/04/2021 19:02:42

Field	Value
Sequence ID	FOIA-00006005
Retention schedule	-
About your complaint	-
What is your complaint?	The public body has not responded to my request
Please give details	<p>I am a trustee for a the Twickenham Riverside Trust charity. Our charity holds a lease on a public garden for 125 years. The council wants to build on the garden. The council has threatened to use Compulsory Purchase powers to obtain the land unless the trust agrees to the development. Since February 2021 I have been requesting information about the site designations of the public garden. The council is being obstructive in giving me the information despite the fact that the information being requested is very much in the public interest and not sensitive. The information I am requesting will likely demonstrate that best practice has not been adhered to by the council with regards to the Diamond Jubilee Gardens. I believe that the gardens were entered onto the brownfield register erroneously. This has resulted in a planning application to intensively develop the site. As a trustee I need to understand how the site came to be designated Brownfield, what the building capacity is, whether it is still Public Open Space etc. The information will be used to assist the surveyor, the charity commission, fellow trustees and the public. I am attaching a single file with all of the information carefully submitted within. Including: Contact details, background, chronological correspondence, etc I hope you find my attached document helpful. Kindest Janine Fotiadis-Negrepontis</p>
Required documents	-
Unable to provide electronically	-
Your request for information	daa5f1c1-b391-4fa3-a2c2-2e0715ae6d0b\Correspondence between JFN and LBRuT.docx
The public body's response (if received)	-
Your request for an internal review	-

Field	Value
The public body's internal review (if received)	-
Add another	False
Other relevant supporting evidence	-
Supporting document description	-
I'm sending more information by post	False
What could the public body do to resolve your complaint?	London Borough of Richmond upon Thames council should provide the information requested from Paul Chadwick because it is in the public interest. It should be discouraged from being obstructive and encouraged to be more transparent. Council officer Paul Chadwick should be discouraged from replying to information requests in the manner in which he does. Firstly, he should not ignore requests, secondly, not state that he will be answering requests only to ignore them further and finally Mr Chadwick should not strong-arm requestees into explaining why they think they are entitled to the information when the reason had been clearly stated previously.
About the public body	-
Public body name	London Borough of Richmond upon Thames
Contact name	Paul Chadwick, Anna Sadler, Charles Murphy, FOI team and Lucy Thatcher
Email	Paul.Chadwick@richmondandwandsworth.gov.uk
Reference number	Not applicable
About you	-
First name	Janine
Last name	Fotiadis-Negrepontis
Company/organisation (if relevant)	Trustee of the Twickenham Riverside Trust
I'm acting on behalf of someone else	False
Person or company you are acting on behalf of	-
Authority to act on behalf	-
Your email	janinefotiadis@yahoo.co.uk
Phone	07500803122
Your address	-
Address	Tanglewind Riverside TWICKENHAM TW1 3DJ GB
Declaration	-
I understand that the ICO may need to share the information I have provided so they can look into my complaint, and have indicated any information or documents that I don't want the ICO to share. I understand the ICO will keep the information relating to my complaint, including any documents for two years, or longer if necessary. If I am making a complaint on someone else's behalf, I	True

Field	Value
confirm that I am allowed to act on their behalf.	
Don't discard	-

Environmental Information Regulations 2004 (EIR)
Information request to London Borough of Richmond upon Thames

Thank you for your correspondence of 29 April 2021 in which you complain about the time taken for the above public authority to carry out an internal review you requested on 8 April 2021.

Your request has been considered under the EIR by the public authority. A public authority must provide an internal review under the EIR. It should provide its internal review decision as soon as possible. The maximum amount of time this should take is 40 working days after it has received the request for a review. This longer period may be justified if an internal review is complex, requires consultation with third parties or there is a high volume of relevant information covered by the request.

I have written to the public authority with a copy of your request for internal review, and have instructed it to issue you with a response. I attach a copy of my correspondence to the public authority for your information. If you remain dissatisfied once you receive the internal review decision and would like us to look into the matter, please contact us and include a copy of the internal review decision.

Yours sincerely

David Dutton
Lead Case Officer

Information Commissioner's Office

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)

Complaint from Janine Fotiadis-Negrepontis
Your reference: see attached

The Information Commissioner has received a complaint from the above named individual who says that they have not received a decision regarding the internal review they requested on 8 April 2021.

Action

If it is the case that you have not issued an internal review decision to the complainant, please do so within 20 working days. Please copy in this office at icocasework@ico.org.uk quoting our reference number.

If you have already responded to the complainant and believe that your review should have been received, we recommend you contact them to confirm receipt, if you have not already done so. Please also send us a copy as confirmation.

If you do not hold the information, then you need to inform the complainant of the fact and give guidance and advice on how they may obtain the requested information from the relevant public authority.

Yours sincerely

David Dutton
Lead Case Officer
Information Commissioner's Office
Direct telephone: 0330 414 6281

3 RESPONSE FROM THE FOI OFFICER AT LBRUT, FOLLOWING THE INSTRUCTION OF THE OMBUDSMAN

From: FOI LBR <foir@richmondandwandsworth.gov.uk>

Date: **22 June 2021** at 14:02:46 BST

To: janinefotiadis@yahoo.co.uk

Subject: Request for Review - LBR2021/0223 - Diamond Jubilee Garden

Official

Request for Review - LBR2021/0223 - Diamond Jubilee Garden

I refer to your request for review received on 08/04/2021. Please see the information below in response to your request: -

Our Response:

1) The Diamond Jubilee gardens were, it was decided at Cabinet on 19/09/2013, to be designated Public Open Space. I would like documentary evidence demonstrating that the land did in fact get designated. Please find the public notice advertising the decision to designate the Diamond Jubilee Gardens as public garden under Section 122 of the Local Government Act 1972.

2) Planning Officer Lucy Thatcher corresponded on 16/02/21 that "in planning terms the Diamond Jubilee Gardens is not designated Public Open Space within the Adopted Local Plan". Has the Diamond Jubilee Gardens had its Public Open Space designation removed? If so, could you please provide all relevant documents to support this including the Public Disposal Notice.

The Diamond Jubilee Gardens were appropriated to open space under the aforementioned Local Government Act 1972. They have not been designated as Public Open Space as part of the Local Plan process. The Local Plan is prepared in accordance with The Town and Country Planning (Local Planning) (England) Regulations 2012 and the Planning and Compulsory Purchase Act 2004. Therefore, no such designation has been removed. Steps taken under the Local Government Act 1972 are relevant to the Council's position as landowner and not as local planning authority.

3) Research shows that the gardens were entered onto the government's Brownfield register in 12/13/17 indeed Ms Thatcher has confirmed this to be true. Can you please provide council documents relating to the gardens being registered Brownfield. And provide evidence whereby the TRT agreed to them being registered Brownfield. I'm also seeking clarity on how the public garden qualified for Brownfield designation. The criteria for registration as set out in The Town and Country Planning (Brownfield Land Register) Regulations

2017: <https://www.legislation.gov.uk/uksi/2017/403/regulation/4/made>

The site of the former Twickenham Pools falls within the criteria set out in [regulation 4](#), and in addition [section 14A of the Planning and Compulsory Purchase Act 2004](#) requires local planning authorities to have regard to:

- (a) the development plan;
- (b) national policies and advice;
- (c) any guidance issued by the Secretary of State.

Note that criterion (a) includes development plan documents, one of which is the Twickenham Area Action Plan, alongside the Local Plan and London Plan for the London Borough of Richmond upon Thames.

The Diamond Jubilee Gardens were listed on the Brownfield Register as brownfield land because they form part of the TW7 Site Allocation in the Twickenham Area Action Plan, which comprises of the whole of the Twickenham Riverside (Former Pool Site) and south of King Street Site. As stated above, the Twickenham Area Action Plan falls under criterion (a).

It should be noted that the Brownfield Register is not a designation or land allocation in terms of development plan policies. The Register has a different role and purpose, i.e. to provide up to date and consistent information on sites with potential for residential development. The Council has followed a consistent approach across the borough in terms of how sites, including large site allocations from the Local Plan, have been added to the Register. Any application that comes forward would need to be considered against Site Allocation TW7 as set out in the Twickenham Area Action Plan, and other policies in the development plan.

Whilst the Diamond Jubilee Gardens may not be formally designated Public Open Space within the Local Plan, they are clearly used for that purpose and therefore would be assessed against relevant policies at such time as a future planning application for the Twickenham Riverside scheme is submitted. Therefore, there is no anomaly in the designation of the land as 'open space' for property holding purposes under the Local Government Act 1972 and the entry of the land in the Brownfield Register.

The inclusion of the Diamond Jubilee Gardens in the regeneration of the Twickenham Riverside site follows the Council's discussions with the Twickenham Riverside Trust, as leaseholders of the land. The Council approached the Trust prior to launching the 2019 RIBA Competition to see if they would consider the Gardens being included in development site and the Trust agreed, based on the Gardens being re-provided and new lease. The Trust provided the Council with letters of support and fully supported Hopkins Architects as winners of the competition. The Council and the Trust have been in negotiations since and have come a long way in agreeing Heads of Terms for the surrender of the current lease.

4) The Brownfield Register (updated in December 2020) for Twickenham Riverside (old pool site) states 'a maximum of 10 net dwellings' and 'a minimum of 9 net dwellings'. Could you please clarify what this refers to, is it the number of dwellings that can be built on the site by law?

The numbers quoted in the Brownfield Register are estimates only based on residential capacity estimates in the London Strategic Housing Land Availability Assessment (SHLAA) 2017. The Mayor of London carries out this London-wide SHLAA to identify the amount of housing capacity that can be brought forwards during the timescale of the new London Plan to address the capital's overall housing need; it is used in the assessment of the boroughs' housing targets for planning policy purposes. It is important to note that the SHLAA process is not a site allocations exercise. It therefore does neither determine whether a particular site should be allocated for development as this is the role of the development plan document, nor does it prescribe what can come forward on a site as part of a planning application.

5) On the Government Land Designation Maps the Diamond Jubilee Gardens does not appear as Public Open Space neither does it appear as sitting within a Conservation Area. Could you please explain the reasons why? The Diamond Jubilee Gardens do not appear as public open space for the reasons given above. The site is within Twickenham Riverside Conservation Area (No. 8) -

- [Twickenham Riverside conservation area 8 \(richmond.gov.uk\)](https://richmond.gov.uk/twickenham-riverside-conservation-area-8)
- [Local Plan Proposals Map Adopted July 2015" \(cartogold.co.uk\)](https://cartogold.co.uk/local-plan-proposals-map-adopted-july-2015/)

6) Finally, could you please provide a map of the Trust's proposed reprovisioned land with details of all land designations?

The Council does not hold this information. No such map currently exists. A map which marks out the new lease footprint for the Twickenham Riverside Trust has been provided to the Trust. It is intended that the area within the footprint is to be used as open space, with the exception of some areas which will remain highway.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. Details of how to contact the Information Commissioner can be found at:

<https://ico.org.uk/global/contact-us/>.

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Regards

FOI and DPA Officer

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